



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable David McKinley
Member, U.S. House of Representatives
Room 1004 Federal Building
425 Juliana Street
Parkersburg, WV 26101

Dear Representative McKinley:

This letter responds to your inquiry dated November 22, 2011, submitted on behalf of your constituent, She asked about the tax consequences of payments that she receives for the care of her son under a State Medicaid Waiver Program. The State has certified her son as requiring a level of care that qualifies him to receive home and community-based services under a Medicaid Waiver Program. She receives payments for community residential habilitation services (training) that she provides to her son under his plan of care. She also receives reimbursement for transportation that she provides to her son under his plan of care. Because is under audit, we can only provide general information.

The general definition of gross income is broad and includes compensation for services (section 61 of the Internal Revenue Code). In addition, an individual must include in gross income the amount of a reimbursement of a personal expense. See *Old Colony Trust Co. v. Commissioner*, 279 U.S. 716 (1929). By contrast, an individual who incurs an expense on behalf of a state may exclude from income a reimbursement by the state of that expense. See Rev. Rul. 60-280, 1960-2 C.B. 12, *modifying* Rev. Rul. 57-60, 1957-1 C.B. 25 (A parent may exclude from income amounts that the parent receives as a reimbursement of the expense of transporting a child to school when the school board was obligated to provide transportation to school children).

A foster care provider may exclude from income qualified foster care payments, including difficulty of care payments (section 131 of the Internal Revenue Code). The IRS has taken the position in Program Manager Technical Advice that a biological

parent of a disabled child may not exclude payments under section 131, because care by a biological parent is not foster care (PMTA 2010-007). Similarly, the IRS has taken the position in litigation that a parent may not exclude payments received for in-home supportive services to a disabled adult child, and that an adult child may not exclude under section 131 payments received for personal care services to a parent. See *Bannon v. Commissioner*, 99 T.C. 59 (1992), and *Alexander v. Commissioner*, T.C. Summ. Op. 2011-48.

I hope this information is helpful. If you have any questions, please contact
or at () .

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)